

CC TO JUDGE KN

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AUG 29 2003 KN

Honorable Thomas S. Zilly
Set for Hearing August 29, 2003

BY AI SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY

ORIGINAL

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VALVE, L.L.C., a Washington Limited
Liability Company,

Plaintiff,

v.

SIERRA ENTERTAINMENT, INC. (AKA
SIERRA ON-LINE, INC.), a Delaware
Corporation,

Defendant.

No. C 02-1683Z

PLAINTIFF VALVE'S SURREPLY TO
DEFENDANT'S MOTION FOR
PROTECTIVE ORDER



02-CV-01683-RPLY

In light of the Declaration of Kirstin Wineke ("Wineke Decl.") filed by Sierra in support of its Reply to Valve's Motion to Compel, Valve respectfully requests that the court consider Valve's Surreply to allow Valve to respond to the new evidence introduced in Sierra's Reply.

A. The Wineke Declaration Demonstrates that Valve is Entitled to the Requested Discovery.

Kirstin Wineke states that she is the "Asia/Pacific Contracts and Royalty Administrator for Vivendi Universal Games ('VUG') in VUG's Los Angeles, California office." Wineke Decl. ¶ 1 (emphasis added). She admits that "VUG has licensed Valve game

PLAINTIFF VALVE'S SURREPLY TO
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PROTECTIVE ORDER - 1

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1 software to cybercafés” in Singapore, Malaysia, Hong Kong, Taiwan and Japan. Wineke
2 Decl. at ¶ 3, 4. Although Ms. Wineke then continues in her declaration to offer excuses as to
3 why Vivendi Universal Games’ activity in reproducing, licensing, and providing Valve
4 Games to cybercafés worldwide should be considered inconsequential and/or characterized as
5 occurring only overseas, her declaration clearly raises issues of fact that are properly grounds
6 for discovery. Indeed, Ms. Wineke’s declaration is a far cry from Sierra’s initial position
7 regarding the “wholly extraterritorial” nature of its overseas activities. There are clearly
8 connections and activities occurring between and among Vivendi Universal Games’ domestic
9 and foreign offices. Moreover, although Ms. Wineke claims that VUG’s Los Angeles office
10 does not “manage” European licensing (and that therefore, by logical extension, VUG’s
11 European activities are beyond the bounds of discovery), Sierra cannot avoid discovery
12 simply by making such flat claims. See Wineke Decl. ¶ 5. Sierra should not be able to
13 withhold relevant documents in light of the evidence Sierra itself presents to the court.

14 Further, in regard to the AMDG issue, Ms. Wineke states that “The [AMDG Counter-
15 Strike] agreement does not permit distribution of Counter Strike to cybercafes. VUG entered
16 into separate agreements with AMDG for the express purpose of withholding cybercafé rights
17 for the Valve game, in an effort to promote settlement of the present dispute with Valve.”
18 Wineke Decl. ¶ 6. Valve disagrees and actually suspects that the AMDG agreement was a
19 “legal” conceit prepared to cover the true nature and purpose of the relationship—namely the
20 supply and licensing of Valve Games to cybercafés in the Philippines. Regardless of the
21 parties’ disagreement on this issue, Ms. Wineke’s statements cannot be a basis for *not*
22 providing discovery on the issue because they raise issues of fact that Valve should be
23 permitted to investigate through discovery.

24 Valve is rather surprised to see an eleventh hour declaration from Ms. Wineke.
25 Although Sierra stated that it “agreed to produce all U.S.-based documentation including all
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PLAINTIFF VALVE'S SURREPLY TO
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correspondence with foreign offices regarding cybercafé licensing,” see Sierra’s Motion for Protective Order at 6:15-17, the fact that Sierra has never mentioned Ms. Wineke as a individual from whom they collected responsive documents further demonstrates the necessity that the Court intervene and order Sierra to produce responsive and relevant documents. Valve has not, to its knowledge, received any documents from Ms. Wineke’s files in the limited production that it has received.

B. Sierra’s Objection to Valve’s Notice of 30(b)(6) Deposition Was Meritless; Ms. Wineke Avers Personal Knowledge of the Issues and is Located In California.

Contrary to Sierra’s previous assertions, there is an individual who resides in the United States that has personal knowledge of the licenses entered into between Sierra and the Asian Media Development Group (“AMDG”) in the Philippines – Kirstin Wineke. This is contrary to what Mr. Roeder claimed in his declaration:

The only individual capable of properly answering the questions pose by Valve’s 30(b)(6) notice is located in Singapore. There are no individuals within Sierra’s U.S. offices who can respond properly and fully regarding the topics set forth in Valve’s 30(b)(6) notice nor can I conceive of any individual at Sierra obtaining sufficient knowledge regarding these matters without having to travel to Singapore or the Philippines to review documents and/or to conduct personal interviews with those having knowledge of the licensing activities within the Philippines.

Roeder Decl. at ¶ 9. In direct contravention of Mr. Roeder’s claim, Ms. Wineke states, “I am aware of the distributorship agreements VUG has entered into with [AMDG] in the Philippines.” Wineke Decl. at ¶ 6. She goes on to describe the different contracts. Id. Given that Sierra now puts Ms. Wineke forth as a declarant in the AMDG matter, Valve sees no reason that Sierra could not have made her available for a 30(b)(6) deposition—particularly because she is VUG’s Los Angeles, California-based Asia/Pacific Contracts and Royalty Administrator. Hence, Sierra’s stated basis for resisting Valve’s 30(b)(6) deposition was meritless.

Valve is entitled to the discovery it seeks concerning Sierra’s activities with regard to

1 foreign cybercafé licensing. Sierra's reasons for resisting discovery were baseless when made
2 and through the process of briefing these issues, its has continued to demonstrate the
3 relevance of the requested discovery.

4 DATED this 29th day of August, 2003.

5 PRESTON GATES & ELLIS LLP

6
7 By 

8 Karl J. Quackenbush, WSBA #9602
9 Jason P. Holtman, WSBA # 28233
10 Attorneys for Plaintiff
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PLAINTIFF VALVE'S SURREPLY TO
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Defendant.

No. C 02-1683Z

CERTIFICATE OF SERVICE

The undersigned declares, I am not a party to the above matter; that I am over the age of 21 years and qualified to make this declaration. On the date below-written, I caused to be served the Plaintiff's Surreply in Opposition to Sierra's Motion for Protective Order and Certificate of Service by legal messenger upon:

Robert J. Carlson
Mark P. Walters
Christensen O'Connor Johnson Kindness
1420 Fifth Avenue, Suite 2800
Seattle, WA 98101-2347

DATED this 29th day of August, 2003.

Linda F. Gage
Linda F. Gage

CERTIFICATE OF SERVICE - 1

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